CHEE WEE CHONG

v.

MOK FWEE & ORS.

HIGH COURT MALAYA, KOTA BHARU
EUSOFF CHIN J
[CIVIL SUIT NO. 58/80]
7 MARCH 1984

LAND LAW: *Caveats - Private caveat - Application to remove - Whether caveator had caveatable interest - National Land Code, ss. 323, 326, 327.*

The registered proprietors of a piece of land in Kota Bharu applied through their attorney for the removal of a private caveat on the land entered by the plaintiff (1st respondent), Mok Fwee. Mok Fwee had entered the caveat on 15 April 1980 and upon being served with notice of intention to remove by the Land Registrar under s. 326(1) of the National Land Code, Mok Fwee had successfully applied to the High Court by *ex parte* application for an order of extension of the caveat until the final disposal of a civil suit between him and the defendants/2nd respondents. The main ground in the affidavit of the caveator was that he was a joint purchaser of the land and that the land was registered in the name of one of the 2nd defendants in the civil suit as a trustee. Regarding the application to remove on behalf of the registered proprietors, the respondents did not file an affidavit-in-reply to oppose the application. They relied on the exhibit attached to the caveator's affidavit in support of his application earlier for extension of the caveat.

Held:

[1] The caveator in his application for extension of the caveat had misled the Court. He had deliberately given a false statement in his affidavit when he stated that the land was registered in the name of one of the 2nd defendants as a trustee. The present registered proprietors were already registered as proprietors of the land when the caveator filed his private caveat.

[2] The caveator had no caveatable interest in the land. It was clear from the statement of claim in the civil suit against the defendants that the plaintiff was claiming an account concerning the sale of the land and a share of the proceeds of the sale. He was not claiming equitable or legal rights, as provided under s. 323 of the National Land Code, to the land in question.

[Application allowed.]

Cases referred to:

Raman Chettiar v. Teo Ghee [1936] MLJ 160
Arunasalam Chetty v. Ramasamy [1914] IFMSCR 153
Tee Chin Yong v. Ernest Jeff [1963] MLJ 118
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212

Legislation referred to:

National Land Code Act 56/1965, ss. 323, 326(1), 327

For the applicant - Gomez; M/s. A. Gomez & Co.
For the respondent - Dato' Wan Mustapha; M/s. Wan Mustapha & Co.

JUDGMENT

Eusoff Chin J:

In this Kota Bharu Civil Suit No.58/80, the plaintiff Mok Fwee alleged that he and the defendants had jointly purchased three pieces of land now known as lot 1081, 1082 and 1083 Section 11 Town of Kota Bharu, and had jointly erected three shophouses on the three lots of land. Plaintiff claimed that the three lots of land were registered in the name of second defendant Chang Kim Heng as trustee. He alleged that Chang Kim Heng had sold land lot 1082 but had not given him (Mok Fwee) his share of the proceeds of sale. The new owners of land lot 1082 are Chee Yaw Chiang Chee Wee Pang and See King @ Chee Wee Ching (the present registered proprietors).

On 15 April 1980 Mok Fwee (the caveator) filed a private caveat against land lot 1082. Upon being served with a notice of intention to remove caveat by the Land Registrar under s. 326(1) of the National Land Code, the caveator had applied to the High Court by *ex parte* application for an order of extension of the caveat until the final disposal of the Civil Suit No. 58/80. Dato Zahir J (as he then was) had granted the application.

The present land owners had applied through their attorney Chee Wee Chong for the removal of the private caveat on the grounds enumerated in the affidavit of Chee Wee Chong sworn on 3 November 1983. The application (summons-in-chambers) was served on the respondent Mok Fwee, Chee Chin, Chang Kim Heng, and Syarikat Hoe Chong Enterprise on 19 November 83 but no affidavit-in-reply was filed by the respondents to oppose the application for the removal of the caveat.

On 14 January 1984 when this application was heard before me, the applicant contended that Mok Fwee (the 1st respondent and caveator) had filed the caveat against the land in question not because he had any registrable interest in the land, but because he was interested only to get his half share in the proceeds of the sale of that land lot 1082 as evidenced in his statement of claim in Civil Suit No. 58/80 mentioned above. A copy of the writ and statement of claim in that Civil Suit No. 58/80 was attached to the applicant's affidavit as Exh. P4. Since the caveator Mok Fwee had not filed his affidavit-in-reply, it is not possible to know what were the grounds upon which he relied to have this caveat extended until the final disposal of this Civil Suit No. 58/80. His Counsel Dato Wan Mustapha submitted that the grounds relied upon for the caveat to remain on the land register until the Civil Suit No 58/80 has been disposed of were enumerated in Exh. P5 attached to the applicant's affidavit.

I examined the said Exh. P5. It is an *ex parte* application by Mok Fwee (the caveator) to the Court for extension of the caveat after he was served a notice by the Collector of Land Revenue under s. 326(1) of the National Land Code. The main ground given in the affidavit of the caveator to the Court then was that the caveator was a joint purchaser of the said land lot 1082, and that it was registered in the name of the second defendant in Civil Suit No. 58/80 i.e., Chang Kim Heng as a trustee. The full grounds given in the affidavit of Mok Fwee (caveator) in support of that application are:

(Exh. P5 attached to applicant's affidavit)

1. As will be seen from the writ of this action, I was and is a partner or joint purchaser with the first defendant in the purchase of lot 1081, 1082 and 1083 Section 11, Kota Bharu town.

2. The first defendant was and is the firm created by myself and first defendant and/or second defendant for the purpose of developing the land so purchased.

3. The said lands were developed mostly through my effort who was assisted by my father Mok Yong Chuan in obtaining finance approvals from two banks namely Chartered Bank RM100,000 and OCBC RM390,000.

4. Further the amalgamation of the five lots purchased into one lot and subsequently subdivided into three lots were all arranged and paid by me in the first instance.

5. The said three lots and the buildings thereon are registered in the name of second defendant as trustee only.

6. On or about 15 April 1980, I caveated the three lots at the land office but on 7 July 1980, the District Office, sent notice to me vide Borang 326 for the lifting of two of the three lots.

7. I pray that this honourable Court make an order under s. 326(2) National Land Code that my original caveat at land office be extended until the finalisation of this suit or otherwise.

Since that was an *ex parte* application, the summons-in-chambers was not served on the defendants in that civil suit, nor was it served on the present registered proprietors.

As stated earlier, Dato Mohd. Zahir J (as he then was) granted the application for extension of the private caveat until final disposal of the Civil Suit No. 58/80.

There is no evidence as to when Chang Kim Heng (the second defendant in C.S. No. 58/80) sold land lot 1082 to the present registered land owners. But the Exh. P6 annexed to the affidavit of the applicant, Chee Wee Chong, is an extract of title for the said land lot 1082. It shows that the present registered proprietors were already registered as proprietors of this land when the caveator filed his private caveat on 15 April 1980. Therefore, the caveator when applying for Court's order for extension of this private caveat by summons-in-chambers filed on 5 August 1980, had deliberately given a false statement in his affidavit in support of his application affirmed on 2 August 1980, when he stated at para. 5 of the affidavit that the 3 lots (including lot 1082) "are registered in the name of the second defendant (Chang Kim Heng) as trustee only". This must have led the Court to think that the second defendants in that Civil Suit No. 58/80 Chang Kim Heng, was still the registered proprietor of land lot 1082 and since the caveator was the plaintiff in that civil suit, the Court allowed the application for extension of the caveat.

The statement of claim of the plaintiff Mok Fwee (the caveator) against the defendant in Civil Suit No. 58/80 exhibited to the affidavit of the applicant as Exh. P4, prayed for the following orders:

1. Account of all the sums received and profit in respect of the sale of lot 1082 with the building thereon.

2. Payment of the balance found due to the plaintiff on the taking of such account.

3. An injunction to restrain the defendants, by themselves, by their servants or agents or otherwise, from mortgaging or leasing or disposals or otherwise until an account is taken.

4. An injunction to restrain the defendants and each of them from operating the business of the firm Syarikat Hoe Chong Enterprise until all the profit and loss account is taken of the said business.

5. A declaration that the plaintiff and first defendant are the equitable and legal owners of the remaining two lots unsold together with the buildings thereon.

6. Costs.

7. Futher or other relief.

From prayers 1 and 2 above it is clear that what the plaintiff (Mok Fwee) wanted was an account concerning the sale of lot 1082, and that he be paid his share of the proceeds of sale of that land. Prayer 5 shows that the plaintiff is not claiming equitable or legal rights to land lot 1082, but only to land lots 1081 and 1083.

Section 323(1) National Land Code states-

323.(1)The persons and bodies at whose instance a private caveat may be entered are-

(a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;

(b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interests; and

(c) the guardian or next friend of any minor claiming to be entitled as mentioned in para. (b).

Section 327(1) states-

327.(1) Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, *ex parte*) may make such order on the application as it may think just.

It is therefore clear that Mok Fwee the caveator is not claiming title to, or any registrable interest in lot 1082 Section 11 Town of Kota Bharu nor is he claiming any right to such title or interest as stated under s. 323 of the National Land Code. I can see no reason why the private caveat on lot 1082 should be allowed to remain pending the disposal of the Civil Suit No. 58/80 since the caveator has no caveatable interest in that land. I therefore order that the caveat be removed within one month from the date of the order, and that costs of the proceedings be paid by the respondent Mok Fwee.

Also found at [1984] 1 CLJ 362